

TREASURY - GENERAL

**STATE INVESTMENT COUNCIL
Fixed Income Exchange-Traded Funds**

Proposed Amendments: N.J.A.C. 17:16-22.1

Authorized By: State Investment Council, Peter A. Langerman, Director,
Division of Investment

Authority: N.J.S.A. 52:18A-91

Calendar Reference: See Summary below for explanation of exception to calendar
requirement.

Proposal Number: PRN 2004-119

Submit comments by June 4, 2004 to:

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The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 17:16-22.1 conform the language in this rule to others within this subchapter by stating that permissible investments are subject to the subchapter's limitations; permits the Division to retain any investments it purchases whose capitalization subsequently falls below the criteria; and eliminates the Approved List of Fixed Income Exchange-Traded Funds. Investments will be made based upon the existing criteria in the current rule.

Given the thousands of individual investments comprising the Approved Lists, it has become unrealistic to expect that Council members will have extensive knowledge of all of these investments. Eliminating the Approved Lists at N.J.A.C. 17:16-22.1 (b) and (c), while at the same time providing criteria for selection of individual investments, gives recognition to the fact that the Council relies on the Division of Investment to have

this in-depth knowledge and to select particular investments. Since the Division of Investment will be reporting to the Council on investment activities, the Council shall continue to be able to fulfill its role of monitoring of investments contained in the various portfolios.

Pursuant to the proposed amendments, the Division of Investment is authorized to purchase only investments that meet the requirements set forth in the subchapter. However, there may arise, from time to time, certain unique circumstances where the Division wishes to purchase an investment that does not meet the requirements set forth in the subchapter. In such event, the proposed amendments at N.J.A.C. 17:16-22.1 (b) provide that the Division could present justification to the Council, and the Council would have the authority to approve the purchase on a case-by-case basis.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is exempt from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

There shall be no social impact from the proposed amendments, although the long term economic effects could benefit New Jersey taxpayers.

Economic Impact

A broader range of investment opportunities could provide higher returns and greater diversification for the State-administered funds.

Federal Standards Statement

A Federal standards analysis is not required because the investment policy rules of the Division of Investment are under the auspices of the State Investment Council, and are not subject to any Federal requirements or standards.

Jobs Impact

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the amendments to this rule.

Agriculture Industry Impact

The proposed amendment shall have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments impose no requirements on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

Smart Growth Impact

The proposed amendments are not anticipated to have an impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 22. FIXED INCOME EXCHANGE-TRADED FUNDS

17:16-22.1 Permissible investments

(a) [Permissible] **Subject to the limitations contained in this subchapter, permissible** investments include exchange-traded funds which invest primarily in domestic fixed income securities authorized pursuant to N.J.A.C. 17:16-11 through 21 herein and[,] which are traded on the New York or American Stock Exchanges or the over-the-counter markets, and have a minimum market capitalization of \$100 million. **Subsequent to purchase, if capitalization falls below \$100 million, the investment does not have to be sold.**

[(b) The Director shall submit a list of fixed income exchange-traded funds to the Council for its approval. Such list may be amended or enlarged from time to time subject to the Council's approval and shall be designated the "Approved List of Fixed Income Exchange-traded Funds."]

(b) Notwithstanding the restrictions contained in this subchapter, the Council may approve the purchase of exchange-traded funds on a case-by-case basis.

[(c) The Director shall only select issues of fixed income exchange-traded funds from the "Approved List of Fixed Income Exchange-traded Funds," to be purchased by the pension funds.]